TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 582. 225.

THE UNITED STATES, APPELLANT,

vs.

WILLIAM T. EWING.

APPEAL FROM THE COURT OF CLAIMS.

FILED JANUARY 10, 1901.

(18017.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 532.

THE UNITED STATES, APPELLANT,

vs.

WILLIAM T. EWING.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.

WILLIAM T. EWING, }
vs. } No. 16345.
THE UNITED STATES. }

I. *Pleadings.*

It appears of record in this cause that on October 8, 1888, Jane Yarrington, William T. Ewing, and sundry other postmasters in the State of Alabama filed their original petition.

It further appears of record that on November 23, 1888, the attorney for claimants, by leave of court, filed an amended petition as a substitute for the original petition, and that on March 26, 1889, the defendants filed their traverse of said petition.

It further appears of record that on November 11, 1897, the attorney for claimant, by leave of court, filed the separate amended petition of William T. Ewing in this cause, which said amended petition is as follows:

2 JANE YARRINGTON AND OTHERS }
v. } No. 16345.
THE UNITED STATES. }

Amended petition of William T. Ewing, filed Nov. 11, 1897.

The amended petition of W. T. Ewing states that he is a citizen of the United States residing at Gadsden, Ala., and that he was duly appointed and qualified and served as postmaster at Gadsden, Ala., continuously from July 1, 1866, to July 1, 1870, and performed during the whole of that period fully and faithfully all the duties of his said office; that during each of the said biennial terms of service the salary allowed and paid him was more than 10 per cent less than he would have received if paid in commissions under the act of 1854; that in consequence thereof he became entitled by the act of March 3, 1883 (Chapter 119 of the Laws of 1883), to a readjustment by the Postmaster-General of his salary in the biennial term between July 1, 1866, and June 30, 1868, and also in the biennial term between July 1, 1868, and June 30, 1870, and accordingly made application to the Postmaster-General within the time limited by law for the readjustments of salary to which he was entitled.

The amended petition further states that the Postmaster-General made the readjustment of salary to which petitioner was entitled, in each of said biennial terms, and that by the readjustment of salary made in the biennial term between July 1, 1866, and July 1, 1868, petitioner became entitled to be paid a salary of $531.90 in lieu of a salary of only
3 $146, which had previously been allowed and paid to him, and that by the readjustment of salary made in the biennial term between July 1, 1868, and July 1, 1870, he became entitled to be paid a salary of $1,015 in lieu of a salary of only $440 which had been previously allowed and paid to him, which $440 allowed and paid was subsequently, however, increased to $531.90, which is the total salary paid to petitioner in the term between July 1, 1868, and July 1, 1870.

The amended petition further states that by the two readjustments of salary petitioner became entitled to be paid a total amount, $1,546.90, whereas he had only been paid $586, leaving $960.90 of his readjustment salary to be paid; that he has been refused payment by the Postmaster-General of the said $960.90, but has been paid $91.90 only thereof; that there is still due him from the United States of his readjusted salary $869, for which sum petitioner prays judgment of this court.

HARVEY SPALDING.

HARVEY SPALDING, being duly sworn, deposes and says, that he is the attorney for the claimant in this case; that no assignment of said claim or of any portion thereof has been made; that the claimant is justly entitled to the amount therein claimed from the United States, as deponent verily believes, exclusive of all offsets and just grounds of defense, and that he believes the facts stated in the said amended petition are true.

HARVEY SPALDING.

Sworn to and subscribed before me on this 11th day of November, 1897.

[SEAL.] GEORGE W. TAYLOR,
Notary Public.

4 *Traverse. Filed Nov. 22, 1899.*

It further appears of record that on the 22d day of November, 1899, the defendants filed their traverse of the said amended petition of William T. Ewing as follows:

In the Court of Claims of the United States. Term A. D. 1898–1899.

WM. T. EWING
vs.
THE UNITED STATES. } No. 16345.

And now comes the Attorney-General, on behalf of the United States, and answering the amended petition of the claimant herein, filed Nov. 11, 1897, denies each and every allegation therein contained, and asks judgment that the said amended petition be dismissed.

And as to so much of the said amended petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

L. H. PRADT,
Assistant Attorney-General.

5 II. *Statement as to the findings of fact, judgment, and opinion of the court of April 2, 1900.*

It appears of record that on the second day of April, 1900, the court filed its findings of fact, and conclusion of law and judgment was entered

for William T. Ewing, claimant, in the sum of eight hundred and sixty-nine dollars, ($869).

The court also filed an opinion.

Subsequently, to wit, on December 10, 1900, as appears hereinafter in this record, the court set aside said findings of fact and vacated said judgment, and thereupon filed new findings of fact and ordered a re-formed judgment to be entered.

The opinion of the court is as follows:

OPINION. FILED APRIL 2, 1900.

DAVIS, J., delivered the opinion of the court:

Plaintiff was postmaster at Gadsden, Ala., from July 1, 1866, to July 1, 1870. He in due course, following the act of 1883, applied for a readjustment of his salary, whereupon the proceedings set forth in the findings of fact took place.

The act of 1883 (22 Stat. L., 487), referring to the act of June 12, 1866, "authorized and directed the Postmaster-General to readjust salaries of postmasters of the third, fourth, and fifth classes (act of July 1, 1864) whose salaries had not been theretofore readjusted under section 8 of the act of June 12, 1866, and who made returns showing that the salary allowed was 10 per centum less than it would have been upon the basis of computation under the act of 1854. These readjustments were to be made according to the mode prescribed in the act of June 12, 1866, (sec. 8), and were "to date from the beginning of the quarter succeeding that in which such sworn returns of receipts and business or quarterly returns were made"—this to be upon written application by the postmaster.

6 Plaintiff accordingly made application, and November 7, 1888, the Post-Office Department made a statement from which this is an extract:

"Statement relative to the claims of Jane Yarrington and others [one of them the plaintiff] for a review of their salaries as former postmasters at the following-named offices in the State of Alabama, under the act of March 3, 1883." In the list appears the name of this plaintiff described as postmaster at Gadsden; his "period of service as per application" is stated as from July 1, 1865, to July, 1874, and under the heading "Remarks" appears this: "The returns for the 3rd and 4th qrs. of 1864, 1st, 2nd, and 3rd qrs. of 1865, and 1st qr. of 1866 are not on record; no review can be made to June 30, 1868. From July 1, 1868, to June 30, 1872, $186.90 was allowed. From July 1, 1872, to June 30, 1874, no additional amount is due."

Plaintiff served as postmaster at Gadsden between July 1, 1866, and June 30, 1870. Under the act of 1864 (13 Stat. L., 335) he was a postmaster of the fifth class (during his first biennial term), as his adjusted salary was less than $100; in the second term, under the same act, he was of the fourth class, his salary being more than $100 and less than $1,000 per annum. He now seeks to recover a readjusted salary of $531.90 in his first term and a readjusted salary of $1,015 in his second term ($1,582.90), less the adjusted salary heretofore paid in each of those terms.

Coming on to be heard with this case, on the merits, is defendants' motion to dismiss the petition upon the ground that the Supreme Court and this court have decided in similar causes "that a readjustment of a postmaster's salary is a necessary precedent to a cause of action in a petition for relief under the act of March 3, 1883 (22 Stat. L., 487), and the act of July, 1864 (13 Stat. L., 335)." It has been decided by the Supreme Court that an action of this nature can not succeed unless a readjustment has in fact taken place (McLean v. The United States, 95 U. S. R., p. 750), a decision followed by the Court of Claims in Birdsong's Case (34 C. Cls. R., p. 437). We were at first consideration of this case on the evidence at that time before us brought to one point as decisive of this action: Did the action of the Postmaster-General amount to a readjustment under the statute?

The Postmaster-General was requested by this court to furnish it "duly authenticated copies of the papers and documents supposed to be on file" in the Post-Office Department "showing or tending to show what action, if any, was taken by the Department upon the request of each of the claimants herein for a readjustment of salary under the following acts," being the statutes which relate to this cause of action. In response to this request the Postmaster-General answered "that the statement hereto annexed and made a part of this reply and marked 'Exhibit A' contains a full copy of the papers named in the order of said court." To this communication is annexed a document thus headed: "Post-Office Department, office of the First Assistant Postmaster-General." This is a statement relating to the claims of postmasters at certain offices (including plaintiff's) under the act of March 3, 1883. Here we find, as to Ewing, that the report shows this:

"The returns for the 3rd and 4th qrs. of 1864, 1st, 2nd, and 3rd qrs. of 1865, and 1st qr. of 1866 are not on record; no review can be made to June 30, 1868. From July 1, 1868, to June 30, 1872, $186.90 was allowed. From July 1, 1872, to June 30, 1874, no additional amount is due."

Up to this point it appeared that the Postmaster-General was to readjust the salaries of postmasters of the class whom plaintiff represents, but it did not appear that he had done so. The case then might perhaps have fallen within the principle that where a claim is by statute made to depend upon the previous action of an executive officer no right vests until that officer has acted.

Subsequent to all this (the 19th of November, 1897) Postmaster-General Gary certified and returned to this court a readjustment of plaintiff's salary with documents in relation to the action of the Post-Office Department in this class of cases.

It therefore follows that if the foregoing action of Postmaster-General Wanamaker is that intended by the statute, it was final. If the action of Postmaster-General Gary is that intended by the statute, the plaintiff should recover $869.

Upon the readjustment made by Postmaster-General Gary we are of opinion that the plaintiff should recover, and this result we reach for the reasons set forth by Postmaster-General Gresham, stated in the findings of fact.

Judgment for plaintiff for $869.

7 Court of Claims. No. 16345.

WILLIAM T. EWING }
vs.
THE UNITED STATES. }

III. *Amended petition. Filed November 30, 1900.*

The amended petition of the claimant states that since April 2, 1900, the Postmaster-General has disclosed the complete facts as to the readjustments of the claimant's salaries for the four biennial terms of service between July 1, 1864, and June 30, 1874, which facts are as follows: The claimant's readjusted salary between July 1, 1866, and June 30, 1868, is $531.90, and his paid salary is $146 for that term. His readjusted salary for the term between July 1, 1868, and June 30, 1870, is $1,015, and his paid salary for that term is $531.90. His readjusted salary for the term between July 1, 1870, and June 30, 1872, is $1,179.67, and his paid salary for that term is $1,015. His readjusted salary for the term between July 1, 1872, and June 30, 1874, is $1,311.16, and his paid salary for that term is $1,080. Wherefore judgment is prayed for in favor of the claimant by this court against the United States for the sum of $1,264.83.

HARVEY SPALDING.

HARVEY SPALDING, attorney for the claimant, being first duly sworn, says that the facts stated in the amended petition are true, as he believes, and that the claimant is entitled to judgment against the United States for the sum of $1,264.83.

HARVEY SPALDING.

Subscribed and sworn to before me this 30th day of Nov., 1900.

GEO. W. TAYLOR, *Notary Public.*

NOV. 3.

(Indorsed:) Copy. Court of Claims. No. 16345. Wm. T. Ewing vs. The United States. Amended petition. Harvey Spalding, atty. for claimant.

8 IV. *Order of court setting aside former findings and judgment and filing new findings and directing re-formed judgment to be entered.*

At a Court of Claims held in the city of Washington on December 10, 1900, it was ordered in the case of William T. Ewing v. United States, No. 16245, that the motion of the claimant to vacate and set aside the findings and judgment herein of April 2, 1900, be allowed, and that new findings be filed and a new judgment be entered.

BY THE COURT.

9 V. *Findings of fact and conclusion of law—Filed December 10, 1900.*

WILLIAM T. EWING }
v.
THE UNITED STATES. }

This case having been heard by the Court of Claims, the court upon the evidence finds the facts to be as follows:

FINDINGS OF FACT.

I.

Plaintiff was postmaster at Gadsden, Ala., during the period involved in this action.

II.

As such postmaster he was paid:

For his services between July 1, 1866, and June 30, 1868, $73 per year, or for two years	$146.00
For his services between July 1, 1868, and June 30, 1870, at $220 per year, or for two years	440.00
For his services between July 1, 1870, and June 30, 1872, at $460 per year, or for two years	920.00
For his services between July 1, 1872, and June 30, 1874, at $540 per year, or for two years	1,080.00
In addition thereto since said service for the two years between July 1, 1868, and June 30, 1870, $45.95 per year, amounting for the two years to	91.90
And for the two years between July 1, 1870, and June 30, 1872, $47.50 per year, amounting for the two years to	95.00
Amounting in all to	2,772.90

During his first biennial term his adjusted salary was less than $100. During his second, third, and fourth biennial terms his adjusted salary was more than $100 and less than $1,000 per annum.

III.

He made application in writing to the Postmaster-General for readjustment and payment of salary (under chapter 119 of the laws of 1883) for service as postmaster, in accordance with chapter 61 of the laws of 1854 and section 8 of chapter 114 of the laws of 1866. This he did prior to January 1, 1887. The Postmaster-General thereupon stated plaintiff's account, as shown later in these findings. This statement shows that (if plaintiff be correct in his contention as to the law) his salary for the four biennial terms between July 1, 1866, and June 30, 1874, should have been $4,037.73, whereas he has been paid in all for said terms but $2,772.90; so (if he be correct) there is still due him as readjusted salary $1,264.83.

IV.

The following order and memorandum were entered by this court; the following call was made by this court upon the honorable the Post-

master-General, and the following reply was received from him, dated May 31, 1889:

10 "*Motion for rule on Post-Office Department in accordance with order of court.*

"ORDER.

"This cause is remanded to the docket for proceedings in accordance with memorandum filed herewith.

"MEMORANDUM.

"This cause is remanded to the docket with direction that a rule issue requesting the Postmaster-General to furnish the court with a certified copy of any and all papers in his Department showing or tending to show what action, if any, was taken by the Department upon the request of each of the claimants herein for a readjustment of salary under the following acts:

"June 22, 1854, chapter 61, 10 Stat. L., page 298; July 1, 1864, sections 1 and 2, chapter 197, 13 Stat. L., 335; June 12, 1866, section 8, chapter 114, 14 Stat. L., 59; March 3, 1883, chapter 119, 22 Stat. L., 487.

"Allowed.

W. A. R., *Ch. J.*

"*Call on Post-Office Department.*

"To the Hon. JOHN WANAMAKER,
"*Postmaster-General:*

"You are hereby requested to furnish to the Court of Claims, that the same may be used as evidence on the trial of the above-entitled cause now pending in said court, duly authenticated copies of the papers or documents supposed to be on file in your Department, set forth in the accompanying rule allowed by Chief Justice Richardson.

"Your reply thereto you will please return to this office at your earliest convenience.

"By order of the court.

"In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this 22 day of May, A. D. 1889.

[SEAL.] "ARCHIBALD HOPKINS,
"*Chief Clerk of Court of Claims.*

"*Reply of Post-Office Department.*

"POST-OFFICE DEPARTMENT,
"OFFICE OF THE POSTMASTER-GENERAL,
"*Washington, D. C., May 31, 1889.*

"*To the honorable the Chief Justice and Judges Court of Claims:*

"Comes now the Postmaster-General, in response to the rule of the honorable the United States Court of Claims, by his honor Chief Justice Richardson, of date May 22, 1889, and makes reply thereto as follows:

"That the statement hereto annexed and made a part of this reply, and marked 'Exhibit A,' contains a full copy of the papers named in the order of said court, and further saith not.

11 "In witness whereof I, John Wanamaker, Postmaster-General, hereunto set my hand and affix the seal of the Post-Office Department this first day of June, A. D. 1889.

[SEAL.] "JOHN WANAMAKER,
"*Postmaster-General.*

"EXHIBIT A.

"POST-OFFICE DEPARTMENT,
"OFFICE OF THE FIRST ASSISTANT POSTMASTER-GENERAL,
"SALARY AND ALLOWANCE DIVISION,
"*Washington, D. C., November 7, 1888.*

"*Statement relative to the claims of Jane Yarrington and others for a review of their salaries as former postmasters at the following-named offices in the State of Alabama under the act of March 3, 1883.*

Post-office.	Name of claimant.	Period of service as per application.		Remarks.
		From—	To—	
* *	* * * * *	* *	* *	* * * * * *
Gadsden...	Wm. T. Ewing	July 1, '65	July 1, '74	The returns for the 3d and 4th qrs. of 1864, 1st, 2nd, and 3rd qrs. of 1865, and 1st qr. of 1866 are not on records; *no review* can be made to June 30'68. From July 1, 1868, to June 30, 1872, $186.90 was allowed. From July 1 '72 to June 30 '74, no additional amount is due.

V.

Subsequent to the foregoing proceedings, to wit, on the 19th of November, 1897, Postmaster-General Gary certified and returned to this court the following readjustment of the plaintiff's salary and documents relating to the action of the Post-Office Department in this and similar cases. If the foregoing readjustment of Postmaster-General Wannamaker is the readjustment prescribed and intended by the statutes therein referred to, there is no balance of salary remaining due the plaintiff. If the readjustment hereinafter set forth of Postmaster-General Gary is the readjustment prescribed and intended by the said statutes, there remains due to the plaintiff the sum of $1,264.83.

VI.

The following documents are found as facts herein, to wit:

1. Letter from Mr. Gresham, Postmaster-General, to Mr. Hatton, First Assistant Postmaster-General, dated June 9, 1883.

2. Copy of item furnished the press by Postmaster-General Gresham, through Chief Clerk Walker, February 16, 1884, etc., dated February 17, 1884.

3. Copy of a circular letter to "late postmasters," Form 1223.

4. Copies of the transcript of registered returns of W. T. Ewing as postmaster at Gadsden, Ala., etc.

5. Copy of the restatement of Ewing's account.

12 1. *Claims of postmasters for readjustment of salaries under act of March 3, 1883.*

"POST-OFFICE DEPARTMENT,
"*Washington, D. C., June 9, 1883.*

"Hon. FRANK HATTON, *First Assistant Postmaster-General.*

"SIR: A careful examination of the act approved March 3, 1883, entitled 'An act authorizing and directing the Postmaster-General to readjust the salaries of certain postmasters in accordance with the provisions of section 8 of the act of June 12, 1866,' has satisfied *me that the purpose* of this legislation is to require the Postmaster-General, in all cases in which any one of his predecessors has failed to comply with the provisions of section 2 of the act of July 1, 1864, as amended by section 8 of the act of June 12, 1866, requiring a readjustment of salaries in offices of the third, fourth, and fifth classes, to proceed to make such adjustments under the terms of that section.

"It is essential, therefore, to ascertain the exact meaning of section 2 of the act of July 1, 1864, and the change effected by the amendment of June 12, 1866.

"The act of June 22, 1854, authorized the Postmaster-General to allow commissions to postmasters at the following rates on the postage collected at their respective offices in each quarter of the year, and in due proportion for any period less than a quarter:

"On not exceeding $100, 60 per cent.

"Over $100 and not exceeding $400, 50 per cent.

"Over $400 and not exceeding $2,400, 40 per cent.

"Over $2,400, 15 per cent.

"There are certain qualifications and additions to these commissions not necessary to enumerate for the purpose of this examination.

"Under the provisions of this act the commissions were allowed to postmasters upon each quarterly return.

"The act of July 1, 1864, classified postmasters according to the salary received. Those whose compensation was not less than $3,000 yearly was placed in the first class; those whose commissions were below that sum and yet reached $2,000 per annum were of the second class; post-offices with the salaries between $1,000 and $2,000 were of the third class; those between $100 and $1,000 of the fourth class, and those under $100 constituted the fifth class.

"Post-offices were to be arranged in these classes whenever for the two consecutive years next preceding July 1, 1864, the compensation at the office should have amounted to the average sum assigned to the class.

"The second section of the act reads as follows:

"'And be it further enacted, That the Postmaster-General shall review once in two years, and in special cases, upon satisfactory representation, as much oftener as he may deem expedient, and readjust, on the basis of the preceding section, the salary assigned by him to any office; but any change made in such salary shall not take effect until the first day of the quarter next following such order, and all orders made assigning or changing salaries shall be made in writing and recorded in this journal and notified to the Auditor for the Post-Office Department.'

"Under this legislation it resulted that while under the act of June

22, 1854, postmasters received their compensation based upon
13 each quarterly return, they were in future to be paid salaries for two years based upon the average amount of receipts, as shown by their quarterly returns for the two years preceding the 1st day of July, 1864, calculated upon the basis fixed in the act of June 22, 1854.

"As this general legislation, however, fixing absolutely the salary of a postmaster for two years in advance upon the basis of his receipts for the two years preceding would, in rapidly growing communities, work an injustice to postmasters the revenues of whose offices would be largely increased without any corresponding increase during the two years in their salary, the Postmaster-General was authorized 'in special cases, upon satisfactory representation, as much oftener as he may deem expedient, to make such readjustment on the basis of the preceding section.'

"The rule fixed by this legislation was a biennial readjustment of salaries. The exception to this rule was the exercise by the Postmaster-General of a discretion 'in special cases.'

"After this act had been in force for nearly two years the second section was amended by adding the following:

"'*Provided*, That when the quarterly returns of any postmaster of the third, fourth, and fifth class show that the salary allowed is 10 per centum less than it would be on the basis of commissions under the act of 1854, fixing compensation, then the Postmaster-General shall review and readjust under provisions of said section.'

"There is no attempt in this section to change the settled rule of biennial readjustment. It requires simply that when the 'quarterly returns' at offices of the third, fourth, and fifth class show that the salary allowed upon the average annual compensation of postmasters for the two next preceding years is 10 per cent less than it would be on the basis of the act of 1854 (which basis is the actual quarterly returns themselves), then the Postmaster-General shall adjust upon the quarterly returns.

"The substitution of a salary for two years by the act of July 1, 1854, based upon the average returns for two years in place of commissions upon each quarterly return, was not abandoned by the amendment, but it was provided that where the effect of taking the average of annual compensation of postmasters for the two years preceding was to reduce the compensation of the postmasters 10 per cent below what it would be by using the eight preceding quarterly returns themselves as a basis, the postmaster at such office belonging either to the third, fourth, or fifth class should have the adjustment upon the actual quarterly returns.

"This construction leaves in full force the policy inaugurated by the act of July 1, 1864, of paying salaries to postmasters, which are fixed for a period of two years in advance, the amendment simply providing that all postmasters of the third, fourth, and fifth class whose compensation was thus reduced 10 per cent or more below what they would have received under the act of 1854 shall have their salaries readjusted and fixed upon the basis of the latter act.

"This construction of the amendment leaves in full force the discretion conferred upon the Postmaster-General to make a readjustment 'in special cases, upon satisfactory representation, as much oftener as he may deem expedient.'

"I am aware a persistent effort has been made for years to make it

14 appear that it was an imperative duty of the Postmaster-General, under the amendment to examine each quarterly return as made by postmasters of the third, fourth, and fifth class, with a view of ascertaining whether officers of these classes would have their compensation reduced on the basis of the act of 1864 as much as 10 per cent below the basis of the act of 1854, and, if this result appeared, to make the adjustment quarterly, as though the act of 1864 had not passed. This construction of the amendment would practically destroy the principles of legislation of which it formed a part as to all officers claimed to be within its provisions and render biennial adjustments as to them not only unnecessary, but absolutely impossible. It was not the intention of Congress by the amendment of 1866 to repeal any part of the statute of 1864. The latter statute was to stand, the amendment simply securing to officers of the designated classes the right to have their biennial adjustments of salaries made upon the basis of the act of 1854, instead of the act of 1864, whenever they could save 10 per cent by this course.

"If, in fact, there are cases in which it appeared from the quarterly returns or from sworn reports of receipts and business that postmasters of the third, fourth, and fifth class at the biennial readjustment had their salaries fixed under the act of 1864, when, by an adjustment under the act of 1854, 10 per cent or more would have been added to their salaries, then under the act of 1883 such postmasters are entitled to whatever additional sum they would and should have received under the act of 1854.

"In all cases, therefore, in which applications are made for readjustment under the act of 1883, signed by the postmasters or late postmasters of the third, fourth, or fifth classes, or if deceased by their executors or administrators, you will take the necessary steps to determine from the sworn returns of receipts and business for readjustment or from the quarterly returns made whether any additional sum is due under section 8 of the act of 1866 as herein construed.

"Very respectfully,

"W. Q. GRESHAM,
"*Postmaster-General.*"

2. *Copy of item furnished to press by Postmaster-General Gresham through Chief Clerk Walker, February 16, 1884, relative to opinion of Attorney-General Brewster construing act of March 3, 1883.*

"WASHINGTON, *February 17, 1884.*

"The Attorney-General has rendered an opinion in regard to the construction of the act of March 3, 1883, relative to the readjustment of postmasters' salaries. He holds that in all cases in which it appears from the biennial adjustment of salaries of postmasters of the third, fourth, and fifth classes that they receive 10 per cent or more less than they would have received in commissions under the act of 1854 they are now entitled under the act of March 3, 1883, to the difference between what was paid them and what they would receive as commissions under the act of 1854. He also holds that it is not the intention of Congress by the acts of 1864 and 1866 to dispense with the biennial readjustments. It follows that a claimant under the act of March 3,

1883, must show that the acts subsequent to 1854 deprived him of 10 per cent or more of what he should have received if those statutes had not been enacted, and he had been compensated on the basis of the act of 1854. This opinion of the Attorney-General is in harmony with the construction of those statutes by the Department."

15 3. *Copy of the circular letter addressed by the Department to late postmasters on Form No. 1223.*

[Form No. 1223, New Series, November, 1884.]

"POST-OFFICE DEPARTMENT,
"OFFICE OF FIRST ASSISTANT POSTMASTER-GENERAL,
"SALARY AND ALLOWANCE DIVISION,
"*Washington, D. C.*, ———, ——.

"SIR: In response to your application, dated ———, for a readjustment of ——— salary ——— as postmaster under the provisions of the act approved March 3, 1883, you are informed that by direction of the Postmaster-General applications or claims of this nature are being placed in process of examination and review.

"The act embraces such claims as postmasters or late postmasters may have, for a review of their salaries under the provision of section 8 of the act of June 12, 1866, wherein it shall appear that the salary allowed was 10 per centum less than it would have been upon the basis of commissions under the act of 1854.

"Briefly stated, the period covered by the act of March 3, 1883, dates from July 1, 1864, to July 1, 1874, and the review will be made on biennial adjustments (i. e., on returns for eight quarters) immediately preceding the biennial adjustment. Claimants should, therefore, furnish without delay the following information, viz:

"First. Period of service as postmaster from ——— to ———.

"Second. The name of post-office, county, and State.

"Third. The present address of claimant.

"This information must be inclosed in an envelope addressed to the First Assistant Postmaster-General, Salary and Allowance Division, Washington, D. C., and bear the inscription 'Claim for review of adjustment of salary.' Upon its receipt your claim will be reviewed in its regular order, and you will be advised when action is taken.

"Very respectfully, ——— ———,
"*First Assistant Postmaster-General.*"

4. *Copies of the transcripts of registered returns of W. T. Ewing as postmaster at Gadsden, Ala., in his biennial term of service beginning July 1, 1866, and ending June 30, 1868, and also in his biennial term of service beginning July 1, 1868, and ending July 1, 1870, on Form No. 1224.*

[Post-office, Gadsden: State, Alabama.]

Quarter ending—	Stamps and envelopes sold.	Letter postage.	Newspaper postage.	Box rents.	Salary allowed.
Sept. 30, 1866	$54.44	$0.75	$2.97	.....	$18.25
Dec. 31, 1866	135.32	.18	3.20	.....	18.25
Mch. 31, 1867	83.44	.09	3.85	.....	18.25
June 30, 1867	88.80	.24	5.30	.....	18.25
Sept. 30, 1867	112.69	.63	7.16	.....	18.25
Dec. 31, 1867	101.63	.22	7.61	.....	18.25
Mch. 31, 1868	129.71	.41	9.82	.....	18.25
June 30, 1868	141.42	.81	13.11	.....	18.25
Total	847.45	3.33	53.02	.....	146.00
Sept. 30, 1868	199.51	.70	14.88	.....	55.00
Dec. 31, 1868	155.25	.95	13.98	.....	55.00
Mch. 31, 1869	199.56	1.17	14.49	.....	55.00
June 30, 1869	195.44	.42	14.39	.....	55.00
Sept. 30, 1869	202.65	.90	15.61	.....	55.00
Dec. 31, 1869	232.18	.81	20.78	.....	55.00
Mch. 31, 1870	322.64	2.53	20.51	.....	55.00
June 30, 1870	221.20	.86	18.80	.....	55.00
Total	1,728.23	8.54	133.44	.....	440.00
Sept. 30, 1870	205.85	138.00	18.90	.....	115.00
Dec. 31, 1870	185.94	.66	22.72	.....	115.00
Mch. 31, 1871	229.61	1.11	23.62	86.10	115.00
June 30, 1871	198.87	1.50	25.11	19.90	115.00
Sept. 30, 1871	191.32	1.36	25.39	20.95	115.00
Dec. 31, 1871	224.94	1.59	26.06	20.95	115.00
Mch. 31, 1872	221.95	1.02	23.09	20.00	115.00
June 30, 1872	222.61	1.25	25.06	21.30	115.00
Total	1,681.13	9.87	289.95	109.20	920.00
Sept. 30, 1872	199.85	.81	25.00	20.97	135.00
Dec. 31, 1872	201.55	1.62	23.77	21.00	135.00
Mch. 31, 1873	276.74	.99	22.82	21.65	135.00
June 30, 1873	221.50	1.56	25.88	21.70	135.00
Sept. 30, 1873	244.82	1.47	20.94	21.35	135.00
Dec. 31, 1873	234.02	1.20	28.66	20.97	135.00
Mch. 31, 1874	275.49	1.47	30.84	20.97	135.00
June 30, 1874	246.30	2.94	32.56	21.15	135.00
Total	1,900.27	12.06	210.47	169.76	1,080.00

5. *Copy of the restatement of the salary account of claimant, W. T. Ewing, made under direction of the Postmaster-General upon transcripts of claimant's registered returns from July 1, 1866, to June 30, 1868, for the biennial period from July 1, 1868, to June 30, 1870.*

No returns from the said post-office were made to the Auditor for the six first quarters, biennial period from July 1, 1864, to June 30, 1866; hence there was no restatement of Mr. Ewing's salary account for the period from July 1, 1866, to June 30, 1868.

16 STATEMENT.

From July 1, 1868, to July 1, 1870.

COMPUTATION.

Eight quarters.

$45.95 ÷ 4=$11.48¾ × 8=$91.90.

Receipts, July 1, 1866, to July 1, 1868.

Stamps	$847.45
Letter postage	3.33
Newspaper postage	53.02

Compensation.

$800.00×60 per cent	$480.00
103.80×50 per cent	51.90
Total compensation, 2 years	531.90
Average compensation, 1 year	265.95
Total salary allowed, 2 years	440.00
Average salary allowed, 1 year	220.00

$265.95 − $220.00=$45.95, or an increase of 20.8 per cent.
$531.90 − $440.00=$91.90, due claimant.

STATEMENT.

From July 1, 1870, to July 1, 1872.

COMPUTATION.

Eight quarters.

$47.50 ÷ 4=$11.875×8=$95.

Receipts, July 1, 1868, to July 1, 1870.

Stamps	$1,728.23
Letter postage	8.54
Newspaper postage	133.44

COMPENSATION.

$800.00×60 per cent	480.00
$1,070.00×50 per cent	535.00
Total compensation, 2 years	1,015.00
Average compensation, 1 year	507.50
Total salary allowed, 2 years	920.00
Average salary allowed, 1 year	460.00

$507.50 − $460.00=$47.50, or an increase of 10.3 per cent.
$1,015.00 − $920.00=$95.00, due the claimant.

STATEMENT.

From July 1, 1872, to July 1, 1874.

COMPUTATION.

Eight quarters.

No additional salary due.

Receipts, July 1, 1870, to July 1, 1872.

Stamps	$1,681.13
Letter postage	9.87
Newspaper postage	289.95
Box rents	109.20

17 COMPENSATION.

$800.00 × 60 per cent	$480.00
$1,180.95 × 50 per cent	590.47
Box rents	109.20
Total compensation, 2 years	1,179.67
Average compensation, 1 year	589.83
Total salary allowed, 2 years	1,080.00
Average salary allowed, 1 year	540.00

$589.83 − $540=$49.83, or an increase of 9.2 per cent.
The increase being less than 10 per cent, nothing is due the claimant.

VII.

On April 3, 1890, the Postmaster-General, pursuant to a resolution of the United States Senate, reading as follows:

"*Resolved*, That the Postmaster-General be directed to report to the Senate the salaries due postmasters computed upon applications presented to the Postmaster-General under chapter 119 of the laws of 1883, upon the basis of chapter 61 of the laws of 1854 agreeably to the requirement of section 8 of chapter 114 of the laws of 1866, and chapter 119 of the laws of 1883 as the requirement of said laws is laid down and published by authority of the Postmaster-General in Exhibit A of Senate Executive Document 146, 49th Congress, first session, and in Post-Office Department circular, form No. 1223, such report to exhibit in each case the amount of computed salary for the biennial term of service, and for each fractional term of service, less the amount of paid salary for the same term of service in all such cases in which it appears that postmasters of the three classes within the acts received salaries ten per cent or more less than they would have received in commissions under the act of 1854 had not the act subsequent to 1854 been enacted, and to be made from time to time as report of such claims already computed can be prepared and tabulated in each State; and that the Postmaster-General be directed to make a like report to the Senate as early as practicable in all such claims presented to the Postmaster-General prior to January 1, 1887, which have not yet been computed."

Made the following communication:

"APRIL 3, 1890.

"Hon. PHILETUS SAWYER,

"*Chairman Senate Committee on Post-Offices and Post-Roads.*

"SIR: I have the honor to transmit the following:

"First. Copy of opinion of Hon. A. A. Freeman, Assistant Attorney-General for the Post-Office Department, to whom the question was referred by Postmaster-General Gresham, setting forth the requirements of section 8, chapter 114, of the laws of 1866, and chapter 119 of the laws of 1883.

"Second. Copy of the rule of said laws as published by Postmaster-General Gresham, on the 16th of February, 1884.

"Third. Copy of Department circular No. 1223 containing the rule of said laws as published by Postmaster-General Gresham and his successors in office.

"Fourth. A tabulated statement exhibiting all the claims within the rule of the law thus published from the State of Alabama, pre-
18 sented and computed under chapter 119 of the laws of 1883, said statement to exhibit the gross amount of the earnings of the postmasters for each term of service thus ascertained, and the amount of salary paid for each of said terms of service, and the difference between what was paid them and what they would have received as commissions under the act of 1854 by the rule promulgated by Postmaster-General Gresham, on the 16th day of February, 1884.

"Very respectfully,

(Signed) "JOHN WANAMAKER,

"*Postmaster-General.*"

This statement was as follows:

"POST-OFFICE DEPARTMENT,

"OFFICE OF THE FIRST ASSISTANT POSTMASTER-GENERAL,

SALARY AND ALLOWANCE DIVISION.

Schedule of the postmasters and ex-postmasters of the 3rd, 4th, and 5th classes for the State of Alabama, showing the difference between amounts heretofore paid, and commissions computed under the act of 1854, as required by resolution of Congress.

No.	Post-office.	State.	Postmaster, ex-postmaster, or claimant.	Term of service.	Aggregate amt. of coms. under act of 1854.	Aggregate of compensation.	Dif. bet. excess of commissions under act of 1854 from aggregate amt. paid.
	Gadsden	Ala	W. T. Ewing	July 1, 1866, to July 1, 1868	$531.99	$146.00	$385.99
	"	"	"	July 1, 1868, to July 1, 1870	1,015.00	531.99	483.10
	"	"	"	July 1, 1870, to July 1, 1872	1,179.67	1,015.00	164.67
	"	"	"	July 1, 1872, to July 1, 1874	1,311.16	1,080.00	231.16

This letter of the Postmaster-General, of which the following is a copy, was followed by a letter, of which the following is a copy:

"SEPT. 30. 1890.

"Hon. PHILETUS SAWYER,
"*Chairman Senate Committee on Post-Offices and Post-Roads,*
"*U. S. Senate, Washington, D. C.*

"SIR: I have the honor to request the return of statements relative to the review of salaries of postmasters and of late postmasters of the 3rd, 4th, and 5th classes for the States of Alabama, Kansas, and Kentucky, which were forwarded to your committee agreeably to resolutions of the Senate.

"I desire to review them in the light of further information on the subject.

"Very respectfully,
(Signed) "JOHN WANAMAKER,
"*Postmaster-General.*"

CONCLUSION OF LAW.

Upon the foregoing findings of fact, the court decides, as a conclusion of law, that the claimant recover judgment of and from the United States in the sum of one thousand two hundred and sixty-four dollars and eighty-three cents.

19 VI. *Judgment of the court.*

WILLIAM T. EWING }
vs. } No. 16345.
UNITED STATES. }

At a Court of Claims held in the city of Washington on the 10th day of December, A. D. 1900, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the claimant, William T. Ewing, have and recover of and from the United States the sum of one thousand two hundred and sixty-four dollars and eighty-three cents ($1,264.$\frac{83}{100}$).

BY THE COURT.

20 VII. *Application for and allowance of appeal.*

WILLIAM T. EWING }
vs. } No. 16345.
UNITED STATES. }

From the judgment rendered in the above-entitled cause on the 10th day of December, 1900, in favor of the claimant, the defendants, by their Attorney-General, on the 11th day of December, 1900, make application for and give notice of an appeal to the Supreme Court of the United States.

LOUIS A. PRADT,
Asst. Attorney-General.

Filed, December 11, 1900.

DECEMBER 11, 1900.

Ordered, That this appeal be allowed as prayed for.

BY THE COURT.

21 In the Court of Claims.

WILLIAM T. EWING
vs.
UNITED STATES. } No. 16345.

I certify that the foregoing are true transcripts, as to the pleadings in the above-entitled cause, of the findings of fact and conclusion of law, of the opinion of the court, of the final judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims, at Washington City, this 5th day of January, A. D. 1901.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk, Court of Claims.

(Indorsement on cover:) File No. 18017. Court of Claims. Term No. 532. The United States, appellant, vs. William T. Ewing. Filed January 10, 1901.

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